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July 21, 2005

The Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**PROVISION OF LEGAL REPRESENTATION FOR PHYSICIANS INVOLVED IN A
MEDICAL BOARD OF CALIFORNIA INQUIRY ON OVERSIGHT OF A MEDICAL
TRAINEE AT HARBOR-UCLA MEDICAL CENTER**
(Second District) (Three Votes)

IT IS RECOMMENDED THAT YOUR BOARD:

- Find that Harbor-UCLA Medical Center medical administration employees, as described below, acted in good faith and without malice in the apparent interests of the County, and
- Delegate authority to the Los Angeles County Counsel to provide legal representation for certain physicians at Harbor-UCLA Medical Center related to an investigation by the Medical Board of California.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION:

The Department of Health Services (DHS) is requesting approval, as required by state law, to provide legal representation to several members of the medical administration at Harbor-UCLA Medical Center who may be called for investigation by the Medical Board of California (MBOC). The MBOC has initiated an investigation into whether a physician fellow in the division of Maternal-Fetal Medicine at Harbor-UCLA Medical Center met State requirements for licensure as a trainee.

As part of this review, the MBOC is looking into the management of the training program and the actions taken by several members of the hospital's medical administration, with potential administrative actions against those individuals. The investigation raises direct questions about services provided by Harbor-UCLA Medical Center, including the licensure status of individuals providing direct patient care and the processes for oversight of physician staff functions. Given that a significant portion of this investigation centers on issues related to direct patient care, the provision of legal representation during this review is appropriate given they were performing these duties in their scope of employment with the County.

FISCAL IMPACT/FINANCING:

Funding is included in the Department of Health Services' (DHS) Fiscal Year 2005-06 budget.

FACT AND PROVISIONS/LEGAL REQUIREMENTS:

Earlier this year, the MBOC initiated an investigation of a physician trainee who was initially accepted as a fellow in maternal-fetal medicine at Harbor-UCLA Medical Center in November 2001. The investigation centers on whether this individual met the California State requirements for licensure as a medical trainee.

As part of the investigation, the chair of the Department of Obstetrics and Gynecology, the Graduate Medical Education Director, Medical Director, and other members of the hospital's medical administration may be formally interviewed and potentially investigated, with possible actions taken against their physician's licenses.

In November 2001, Harbor-UCLA Medical Center had a maternal-fetal medicine fellow matched through the National Residency Match Program, which is the national program for identification and selection of residents for admission into medical education and training programs. The newly matched fellow was a United States citizen who trained in Israel. While the match program requires all participants to have successfully completed their medical education and be appropriately licensed in the state in which they are training, the match did not reflect the specific requirements as applied to MFM Fellowship programs in California.

In preparation for the July 1, 2002, start date for his fellowship, the fellow contacted the MBOC and received a letter from them indicating that his undergraduate medical education satisfied the requirements of the Business and Professions code for licensure. The letter from the MBOC further noted that to satisfy training requirements for California licensure, he must complete two years of Accreditation Council for Graduate Medical Education (ACGME) approved postgraduate training. However, the letter also indicated that foreign medical graduates may practice in the United States for up to three years (the duration of the maternal-fetal medicine fellowship) without a license, if they are participating in an "approved program." Based on the above correspondence, Harbor-UCLA Medical Center believed the fellow could practice in California for not greater than three years in its American Board of Obstetrics and Gynecology approved maternal-fetal medicine training program. However, in July 2002, the hospital received clarification that the only accrediting organization recognized in California Code is the ACGME; however while the ACGME is the accrediting entity for obstetrics and gynecology resident training programs, it does not accredit maternal-fetal medicine fellowship programs in the United States.

Harbor-UCLA Medical Center staff created an alternative strategy to allow the fellow to ultimately complete his fellowship by revising his position and responsibilities to a second year resident in order to meet state licensing requirements. However, the ACGME was not notified until late in the fellow's first year of training, and the request to designate him as a resident for this training period was denied. Ultimately, the fellow was removed from any clinical care and was assigned to full-time research for the remainder of his fellowship. The fellow has subsequently returned to Israel.

The MBOC has initiated this investigation as a result of concerns that this individual was practicing without a license in a non-ACGME approved training program while under the

supervision of Harbor-UCLA Medical Center administration in its training programs. The MBOC also is investigating information it has received from physician administrators to ensure that it was provided in good faith.

State law permits legal representation for an administrative proceeding against a County employee for actions undertaken within the scope of his or her County employment, if it is determined the employee acted in good faith and without malice in the apparent interests of the County. In addition, such representation must be determined to be in the best interest of the County. The Department has reviewed this matter and believes that given the subject matter of the MBOC investigation and the underlying circumstances and roles and responsibilities of the involved Harbor-UCLA Medical Center staff, legal representation is appropriate for the personnel involved, as set forth above.

The Department has previously requested and obtained Board approval on several occasions to provide legal representation of physicians under investigation by the MBOC. Outside counsel will be engaged by County Counsel through its regular processes.


CONTRACTING PROCESS:

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

The Department believes it is in the best interests of the County to provide legal representation to any of the members of Harbor-UCLA Medical Center's medical administration that may be called for investigation to ensure that they continue to oversee and participate in Harbor-UCLA Medical Center's post-graduate training programs.

Respectfully submitted,



Thomas L. Garthwaite, MD
Director and Chief Medical Officer

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c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors